



Protective Order Provisions

July 25, 2011

Overview



- Va. Code § 16.1-253.2
- Legislative History
- Policy Decision
- Proposal to Modify Va. Code § 16.1-253.4
- Discussion

Va. Code § 16.1-253.2



- Section 16.1-253.2 provides:

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103, which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate is guilty of a Class 1 misdemeanor.



- What does the dependant clause, *“which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent’s family or household member as the court deems appropriate,”* modify?

Va. Code § 16.1-253.2



- Does the clause modify the word “*provision*,” or the words “*a protective order*?”
- If it modifies the word “*provision*,” then violations of protective orders that do not involve trespass, family abuse, or prohibited contacts, are not covered by this statute.
 - Examples of potential violations include failing to pay rent, failing to pay utilities, refusal to go to counseling.
- These violations would be handled by a show cause from the court that issued the protective order.

Va. Code § 16.1-253.2



- If the clause modifies the words “***a protective order***,” then a violation of any of the terms of a protective order is an automatic Class 1 misdemeanor, provided the protective order prohibits further acts of trespass, family abuse, or contact between the parties.
 - Note that essentially all protective orders meet this requirement and prohibit at least one of these activities.
- Informal conversations with prosecutors, defense attorneys, and law enforcement officers in various parts of the state have revealed no consistent interpretation of this language.

Legislative History



- The original language of Va. Code § 16.1-253.2, which was enacted in 1987, shows that the clause in question modified the word “**provision**,” and not the words “**a protective order**.”
 - *In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-279 or § 16.1-279.1, which prohibits such person from going or remaining upon land, buildings or premises, shall be guilty of trespass...*

Legislative History



- When Va. Code § 16.1-253.2 was subsequently modified over the years, and additional terms were added to the dependant clause, it became ambiguous as to which words, “*provision*,” or “*a protective order*,” were being described by that clause.

Policy Decision



- This uncertainty in the meaning of the statute should be eliminated, to avoid differing application of its provisions throughout the Commonwealth.
- Should any violation of a protective order be a Class 1 misdemeanor, or only those violations that involve trespass, family abuse, or further contacts?

Proposal to Modify Va. Code § 16.1-253.4



- It has been suggested that the following change be made to Va. Code § 16.1-253.4(B):
...the judge or magistrate shall issue an ex parte emergency protective order... 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the [delete respondent] petitioner as the judge or magistrate deems necessary...
- It makes more sense for the statute to read that the petitioner may request the respondent have no further contact with the petitioner's family, than the respondent have no further contact with the respondent's family.



Discussion
